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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,214	01/24/2002	Mark A. Howard	31515-CON1	3318

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EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/03/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/057,214

Applicant(s)  
Howard et al.

Examiner  
Deborah Ware

Art Unit  
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 10, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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Claims 1-12 are presented for examination on the merits.

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

3. The pH of the dispersion at a level between 7.5-8.0 does not appear to be clearly supported by the instant specification. Applicants are requested to provide support for this pH range in the specification by amending the specification to include this limitation or to point out to the examiner wherein the specification support can be found for this limitation.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-8 are rendered vague and indefinite or the recitation of "said defatted jojoba protein" at line 3 in claim 1. The recitation lacks antecedent basis in the claims. Furthermore, the phrase "deactivating remaining protease enzyme" is unclear as to whether more than one protease enzyme will be remaining because more than one protease is added in the hydrolyzing

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step. Claim 3 further recites "said additional mixing step" which appears to lack proper antecedent basis. It is suggested to change "said" to --the-- or to simply delete "step" or to add --step-- after "mixing" at line 4 of claim 2. Claims 4-5 recite "said acid addition step" wherein proper antecedent basis is not set forth for the phrase. Thus, it is suggested to change "said" to --the-- or provide proper antecedent basis for the recitation of the terminology used in claims 4-5. Furthermore, "said enzyme deactivation step" appears to lack sufficient antecedent basis and should also be corrected, accordingly. The term "aging" in claim 8 is vague and unclear as to what is the intended meaning in the claim.

Claims 9-12 are rendered vague and indefinite for the phrase "to generate" wherein it is unclear that heating and agitating are required to generate a hydrolysate? It is suggested to provide for "agitating" as a separate process step, and/or provide for separate and distinct process steps for carrying out the claimed process. Also the term "solids level" is unclear as to what is intended within the meaning of the terminology, therefore, it is suggested to change the term to --solids content-- unless Applicants can provide an explanation as to intended meaning of "solids level". Perhaps it would be even better to change "to a solids level of 20-30%" to --to provide for a solids content of 20-30% of said hydrolysate-- . Claim 12 is uncertain for the phrase "and allowing the same to age" since it is unclear what is intended by "the same" and further what is intended by the phrase "to age".

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Claims 1-12 are additionally rendered vague and indefinite for the recitation of the first step of "forming an aqueous alkaline dispersion" wherein it is unclear how the dispersion is being formed, per se. The claims do recite a clear and distinct process step for this particular step.

Claims appear to be free of the prior art.

The references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
**DEBORAH K. WARE**  
**PATENT EXAMINER**

Deborah K. Ware

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June 29, 2002

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 3-8 and 11-13, drawn to hydrolyzed jojoba protein product by process comprising hydrolyzed peptides and/or protein fragments of different jojoba proteins and aqueous dispersion containing the same as well as prepared the same but as an aqueous dispersion, classified in class 424, subclass 400.
- II. Claims 14-21, drawn to hydrolyzed jojoba protein product comprising a mixture of amino acids and/or protein fragments, classified in class 530, subclass 377.

2. The inventions are distinct, each from the other because of the following reasons:

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. The products of each Group I and II are distinct and different from each other in that Group II does not have hydrolyzed protein fragments and/or peptides as required of Group I, but Group II may comprise free amino acids which have not been hydrolyzed. Also the product of Group II may be prepared by a another method whereas the product of Group I is prepared by a specific process as set forth in the product by process claims of 1 and 7 of Group I. Therefore, a reference which reads on Group I would not necessarily read on Group II. Also each group is classified differently as well.

3. A telephone call was made to J. Collins on June 27, 2002, to request an oral election to the above restriction requirement, but did not result in an election being made

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245.

**Deborah K. Ware**

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**June 29, 2002**